

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 162, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
2 paragraph and insert:
3 "SECTION 1. IC 27-1-15.6-22 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 22. ~~(a)~~ An insurance
5 producer may not receive compensation for the sale, solicitation,
6 negotiation, or renewal of any insurance policy issued to any person or
7 entity for whom the insurance producer, for a fee, acts as a consultant
8 for that policy unless:
9 (1) the insurance producer provides to the insured a written
10 agreement in accordance with section 23(c) of this chapter; and
11 (2) the insurance producer discloses to the insured the following
12 information prior to the sale, solicitation, negotiation, or renewal
13 of any policy:
14 (A) The fact that the insurance producer will receive
15 compensation for the sale of the policy.
16 (B) The method of compensation.
17 ~~(b) The requirements of this subsection are in addition to the~~
18 ~~requirements set forth in subsection (a). A risk manager described in~~
19 ~~IC 27-1-22-2.5(b)(2) shall, before providing risk management services~~
20 ~~to an exempt commercial policyholder (as defined in IC 27-1-22-2.5),~~
21 ~~disclose in writing to the exempt commercial policyholder whether the~~
22 ~~risk manager will receive or expects to receive any commission, fee, or~~

other consideration from an insurer in connection with the purchase of a commercial insurance policy by the exempt commercial policyholder. However, if the risk manager charges the exempt commercial policyholder a fee for risk management services, the risk manager shall disclose in writing to the exempt commercial policyholder the specific amount of any commission, fee, or other consideration that the risk manager may receive from an insurer in connection with the purchase of the policy. The risk manager shall, before providing the risk management services, obtain from the exempt commercial policyholder a written acknowledgment of the disclosures made by the risk manager to the exempt commercial policyholder under this subsection.

SECTION 2. IC 27-1-15.6-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 23. (a) An individual or corporation shall not engage in the business of an insurance consultant until a consultant license has been issued to the individual or corporation by the commissioner. However, a consultant license is not required for the following:

- (1) An attorney licensed to practice law in Indiana acting in the attorney's professional capacity.
- (2) A duly licensed insurance producer or surplus lines producer.
- (3) A trust officer of a bank acting in the normal course of the trust officer's employment.
- (4) An actuary or a certified public accountant who provides information, recommendations, advice, or services in the actuary's or certified public accountant's professional capacity.

(b) An application for a license to act as an insurance consultant shall be made to the commissioner on forms prescribed by the commissioner. An applicant may limit the scope of the applicant's consulting services by stating the limitation in the application. The areas of allowable consulting services are:

- (1) Class 1, consulting regarding the kinds of insurance specified in IC 27-1-5-1, Class 1; and
- (2) Class 2 and Class 3, consulting regarding the kinds of insurance specified in IC 27-1-5-1, Class 2 and Class 3.

Within a reasonable time after receipt of a properly completed application form, the commissioner shall hold a written examination for the applicant that is limited to the type of consulting services designated by the applicant, and may conduct investigations and propound interrogatories concerning the applicant's qualifications, residence, business affiliations, and any other matter that the commissioner considers necessary or advisable in order to determine compliance with this chapter or for the protection of the public.

(c) For purposes of this subsection, "consultant's fee" does not include a late fee charged under section 24 of this chapter or fees otherwise allowed by law. A consultant shall provide consultant services as outlined in a written agreement. The agreement must be signed by the person receiving services, and a copy of the agreement must be provided to the person receiving services before any services are performed. The agreement must outline the nature of the work to be performed by the consultant and the method of compensation of the consultant. The signed agreement must be retained by the consultant for not less than two (2) years after completion of the services. A copy of the agreement shall be made available to the commissioner. In the absence of an agreement on the consultant's fee, the consultant shall not be entitled to recover a fee in any action at law or in equity.

(d) An individual or corporation shall not concurrently hold a consultant license and an insurance producer's license, surplus lines producer's license, or limited lines producer's license at any time.

(e) A licensed consultant shall not:

- (1) employ;
- (2) be employed by;
- (3) be in partnership with; or
- (4) receive any remuneration whatsoever;

from a licensed insurance producer, surplus lines producer, or limited lines producer or insurer, except that a consultant may be compensated by an insurer for providing consulting services to the insurer.

(f) A consultant license shall be valid for not longer than twenty-four (24) months and may be renewed and extended in the same manner as an insurance producer's license. The commissioner shall designate on the license the consulting services that the licensee is entitled to perform.

(g) All requirements and standards relating to the denial, revocation, or suspension of an insurance producer's license, including penalties, apply to the denial, revocation, and suspension of a consultant license as nearly as practicable.

(h) A consultant is obligated under the consultant's license to:

- (1) serve with objectivity and complete loyalty solely the insurance interests of the consultant's client; and
- (2) render the client such information, counsel, and service as within the knowledge, understanding, and opinion, in good faith of the licensee, best serves the client's insurance needs and interests.

(i) ~~Except as provided in subsection (j);~~ The form of a written agreement required by subsection (c) must be filed with the

commissioner not less than thirty (30) days before the form is used. If the commissioner does not expressly approve or disapprove the form within thirty (30) days after filing, the form is considered approved. At any time after notice and for cause shown, the commissioner may withdraw approval of a form effective thirty (30) days after the commissioner issues notice that the approval is withdrawn.

(j) Subsection (i) does not apply to the form of a written agreement under subsection (c) that is executed by an insurance producer and an exempt commercial policyholder (as defined in IC 27-1-22-2.5):".

Page 1, line 3, strike ""exempt" and insert "".

Page 1, line 3, strike "an" and insert "**a business, nonprofit, or governmental**".

Page 1, line 3, delete ":" and insert "**purchases a**".

Page 1, strike lines 4 through 6.

Page 1, line 7, strike "(2) has purchased the".

Page 1, line 7, after "of" insert "**commercial**".

Page 1, line 8, delete ";" and insert ".".

Page 1, line 8, strike "and".

Page 1, strike lines 9 through 17.

Page 2, strike lines 1 through 23.

Page 2, line 2, delete "ten".

Page 2, line 3, delete "(\$10,000)".

Page 2, after line 23, begin a new paragraph and insert:

"SECTION 4. IC 27-1-22-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. (a) Every insurer shall file with the commissioner every manual of classifications, rules, and rates, every rating schedule, every rating plan, and every modification of any of the foregoing which it proposes to use.

(b) **Except as provided in subsection (m)**, the following types of insurance are exempt from the requirements of subsections (a) and (j):

(1) Inland marine risks, which by general custom of the business are not written according to manual rates or rating plans.

(2) Insurance, other than workers compensation insurance, ~~or professional liability insurance~~, issued to ~~exempt~~ commercial policyholders.

(c) Every such filing shall indicate the character and extent of the coverage contemplated and shall be accompanied by the information upon which the filer supports such filing.

(d) The information furnished in support of a filing may include:

(1) the experience and judgment of the insurer or rating organization making the filing;

(2) its interpretation of any statistical data it relies upon;

(3) the experience of other insurers or rating organizations; or

(4) any other relevant factors.

The commissioner shall have the right to request any additional relevant information. A filing and any supporting information shall be open to public inspection as soon as stamped "filed" within a reasonable time after receipt by the commissioner, and copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

(e) Filings shall become effective upon the date of filing by delivery or upon date of mailing by registered mail to the commissioner, or on a later date specified in the filing.

(f) Specific inland marine rates on risks specially rated, made by a rating organization, shall be filed with the commissioner.

(g) Any insurer may satisfy its obligation to make any such filings by becoming a member of, or a subscriber to, a licensed rating organization which makes such filings and by authorizing the commissioner to accept such filings on its behalf, provided that nothing contained in this chapter shall be construed as requiring any insurer to become a member of or a subscriber to any rating organization or as requiring any member or subscriber to authorize the commissioner to accept such filings on its behalf.

(h) Every insurer which is a member of or a subscriber to a rating organization shall be deemed to have authorized the commissioner to accept on its behalf all filings made by the rating organization which are within the scope of its membership or subscribership, provided:

(1) that any subscriber may withdraw or terminate such authorization, either generally or for individual filings, by written notice to the commissioner and to the rating organization and may then make its own independent filings for any kinds of insurance, or subdivisions, or classes of risks, or parts or combinations of any of the foregoing, with respect to which it has withdrawn or terminated such authorization, or may request the rating organization, within its discretion, to make any such filing on an agency basis solely on behalf of the requesting subscriber; and

(2) that any member may proceed in the same manner as a subscriber unless the rating organization shall have adopted a rule, with the approval of the commissioner:

(A) requiring a member, before making an independent filing, first to request the rating organization to make such filing on its behalf and requiring the rating organization, within thirty (30) days after receipt of such request, either:

(i) to make such filing as a rating organization filing;

(ii) to make such filing on an agency basis solely on behalf

1 of the requesting member; or
 2 (iii) to decline the request of such member; and
 3 (B) excluding from membership any insurer which elects to
 4 make any filing wholly independently of the rating
 5 organization.

6 (i) Under such rules as the commissioner shall adopt, the
 7 commissioner may, by written order, suspend or modify the
 8 requirement of filing as to any kinds of insurance, or subdivision, or
 9 classes of risk, or parts or combinations of any of the foregoing, the
 10 rates for which can not practicably be filed before they are used. Such
 11 orders and rules shall be made known to insurers and rating
 12 organizations affected thereby. The commissioner may make such
 13 examination as the commissioner may deem advisable to ascertain
 14 whether any rates affected by such order are excessive, inadequate, or
 15 unfairly discriminatory.

16 (j) Upon the written application of the insured, stating the insured's
 17 reasons therefor, filed with the commissioner, a rate in excess of that
 18 provided by a filing otherwise applicable may be used on any specific
 19 risk.

20 (k) An insurer shall not make or issue a policy or contract except in
 21 accordance with filings which are in effect for that insurer or in
 22 accordance with the provisions of this chapter. Subject to the provisions
 23 of section 6 of this chapter, any rates, rating plans, rules, classifications,
 24 or systems in effect on May 31, 1967, shall be continued in effect until
 25 withdrawn by the insurer or rating organization which filed them.

26 (l) The commissioner shall have the right to make an investigation
 27 and to examine the pertinent files and records of any insurer, insurance
 28 producer, or insured in order to ascertain compliance with any filing for
 29 rate or coverage which is in effect. The commissioner shall have the
 30 right to set up procedures necessary to eliminate noncompliance,
 31 whether on an individual policy, or because of a system of applying
 32 charges or discounts which results in failure to comply with such filing.

33 (m) The department may adopt rules to
 34 (1) implement the exemption under subsection (b);
 35 (2) impose disclosure requirements the commissioner determines
 36 are necessary to adequately protect exempt commercial
 37 policyholders; and

38 (3) establish the form of the report required by subsection (n);
 39 (n) Each insurer who issues insurance to an exempt commercial
 40 policyholder shall file an annual report with the department by
 41 February 1 of each year. The annual report may not disclose the
 42 identity of an exempt commercial policyholder and must include only

the following information regarding each exempt commercial policyholder:

(1) The account number, policy number, or other number used by the insurer to identify the insured;

(2) The amount of aggregate annual commercial premium;

(3) The inception date and expiration date of commercial insurance coverage provided by the insurer;

(4) The criteria in section 2.5(a)(3) of this chapter used to establish the entity as an exempt commercial policyholder;

(o) The annual report filed under subsection (n) must be accompanied by the fee prescribed by IC 27-1-3-15(e). For purposes of calculating the required fee, each policy purchased by an exempt commercial policyholder shall be considered a product filing under IC 27-1-3-15(e).

(m) This subsection applies to an insurer that issues a commercial property or commercial casualty insurance policy to a commercial policyholder. Not more than thirty (30) days after the insurer begins using a commercial property or commercial casualty insurance:

(1) rate;

(2) rating plan;

(3) manual of classifications; or

(4) modification of an item specified in subdivision (1), (2), or (3);

the insurer shall file with the department, for informational purposes only, the item specified in subdivision (1), (2), (3), or (4). Use of an item specified in subdivision (1), (2), (3), or (4) is not conditioned on review or approval by the department. This subsection does not require filing of an individual policy rate if the original manuals, rates, and rules for the insurance plan or program to which the individual policy conforms has been filed with the department.

- 1 SECTION 5. [EFFECTIVE JULY 1, 2006] IC 27-1-20-34 IS
- 2 REPEALED."
- 3 Renumber all SECTIONS consecutively.
 (Reference is to SB 162 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 7, Nays 0.

Senator Paul, Chairperson